

No. 41892-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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COURT OF APPEALS
DIVISION II

LEIGH ANN SHOFFNER,

Appellant,

vs.

STATE OF WASHINGTON; and VICTORIA RAPID
TRANSIT, INC., a Washington for-profit corporation,

Respondents.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

I. ARGUMENT.....	1
A. The term “course of employment” is construed broadly, and any ambiguities are to be resolved in favor of the seaman.....	1
B. Shoffner was injured in the course of employment because she was acting for the benefit of WSF and WSF exercised control over her actions.....	5
C. Shoffner was injured while using the only available route of immediate ingress and was thus injured in the course of employment.....	8
D. There is no blue-water / brown-water distinction in the context of injuries sustained during ingress.....	13
E. The long-distance commuting cases relied on by WSF are not ingress cases.....	15
F. Shoffner was injured in the course of employment because she was responding to the call of duty.....	17
G. WSF’s control over the premises where Shoffner was injured weighs in favor of a finding that she was injured in the course of employment.....	18
H. WSF’s unreasonable, willful and persistent denial of maintenance and cure supports an award of attorney’s fees, costs and compensatory damages.....	20
II. CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<u>Aguilar v. Standard Oil Co.</u> , 318 U.S. 724 (1943).....	1, 2, 3, 7, 9, 10, 14, 17, 19
<u>Bavaro v. Grand Victoria Casino</u> , 1998 U.S. Dist LEXIS 23095 (N.D. Ill. 1998).....	10, 11, 18
<u>Black v. Red Star Towing</u> , 860 F.2d 30 (2 nd Cir. 1988).....	10
<u>Braen v. Pfeifer Oil Transp. Co.</u> , 361 U.S. 129 (1959).....	2, 3, 7, 9, 10, 12, 19
<u>Daughdrill v. Diamond M. Drilling Co.</u> , 447 F.2d 781 (5 th Cir. 1971).....	15, 16
<u>Daughenbaugh v. Berkleham Steel Corp., Great Lakes S.S. Div.</u> , 891 F.2d 1199 (6 th Cir. 1989).....	10
<u>Empey v. Grand Trunk Western R. Co.</u> , 869 F.2d 293 (6 th Cir. 1989).....	6
<u>Farrell v. United States</u> , 336 U.S. 511, 69 S. Ct. 707, 93 L.Ed. 850 (1949).....	10
<u>Forest v. Co-Mar Offshore Corp.</u> , 508 F. Supp. 980 (E.D. La. 1981).....	6
<u>Hagans v. Ellerman & Bucknall Steamship Co.</u> , 318 F.2d 563 (3d Cir. Pa 1963).....	19
<u>Hocut v. Ins. Co. of N. America</u> , 254 So. 2d 108 (La. App. 3 rd Cir. 1971).....	10
<u>Kopcynski v. The Jacqueline</u> , 742 F.2d 555, 1985 A.M.C. 769 (9th Cir. 1984).....	21
<u>Lee v. Mississippi River Grain Elevator, Inc.</u> ,	

591 So.2d 1371 (La. App. 1991).....	3, 5, 6, 8, 15, 16
<u>Marceau v. Great Lakes Transit Corp.</u> , 146 F.2d 416 (1945).....	7, 9, 10, 12, 13, 16, 19
<u>Pensiero v. Bouchard Transp. Co.</u> , 2008 AMC 363 (E.D.N.Y. 2007).....	3, 4, 8, 10, 12, 14, 15, 19
<u>Price v. Connolly-Pacific Co.</u> , 162 Cal. App. 4 th 1210 (2008).....	2
<u>Rannals v. Diamond Jo Casino</u> , 265 F.3d 442 (6 th Cir. 2001).....	6
<u>Rivers v. Schlumberger Well Surveying Corp.</u> , 389 So. 2d 807 (La.App. 3 Cir. 1980).....	9
<u>Rodriguez v. Trump Casino</u> , 2009 U.S. Dist LEXIS 65501 (N.D. Ind. 2009).....	10, 18
<u>Sassaman v. Pennsylvania R. Co.</u> , 144 F.2d 950 (3 rd Cir. N.J. 1944).....	9
<u>Sellers v. Dixilyn Corp.</u> , 433 F.2d 446 (5 th Cir. 1970).....	11, 15, 16
<u>Vaughan v. Atkinson</u> , 369 U.S. 527 (1962).....	21
<u>Vincent v. Harvey Well Service</u> , 441 F.2d 146 (5 th Cir. 1971).....	4, 8, 14, 18
<u>Williamson v. Western Pacific Dredging Corp.</u> , 441 F.2d 65 (9 th Cir. 1971).....	3, 4, 7, 8

Statutes

46 U.S.C. § 30104.....	1
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I. ARGUMENT

The only issue on appeal is whether Leigh Ann Shoffner was acting in the “course of employment” when she was injured in ingress to the vessel where she worked as a Washington State Ferries (WSF) employee. Whether Shoffner was in the “course of employment” is relevant to her recovery of unpaid maintenance, cure, unearned wages, and damages under the Jones Act, 46 U.S.C. § 30104, and general maritime law. At the time of her injury, Shoffner was approaching the vessel to begin her shift. She had already parked as directed by her employer in a designated employee parking lot leased to WSF, placed a placard reading “on-duty” in the window of her car as required by WSF, and passed a checkpoint monitored by a police officer into an area of restricted access controlled by WSF. Upon these facts, Shoffner was injured in the “course of employment” when she stepped into a depression in the sidewalk in darkness walking to the vessel.

A. The term “course of employment” is construed broadly, and any ambiguities are to be resolved in favor of the seaman.

The responsibility of vessel owners to seamen for maintenance, cure, and unearned wages is to be construed “broadly, when an issue concerning ... scope arises”. Aguilar v.

Standard Oil Co., 318 U.S. 724, 729 (1943). The U.S. Supreme Court held, “the words ‘in the course of his employment’ as used in the Jones Act were not restricted to injuries occurring on navigable waters, ... they were broadly used by Congress in support of ‘all the constitutional power it possessed’”. Braen v. Pfeifer Oil Transp. Co., 361 U.S. 129, 130-31 (1959). “[T]he nature and foundations of the liability require that it be not narrowly confined or whittled down by restrictive and artificial distinctions defeating its broad and beneficial purposes. If leeway is to be given in either direction, all the considerations which brought the liability into being dictate it should be in the sailor’s behalf.” Aguilar, 318 U.S. at 735.¹

Whether a seaman is “in the course of employment” is a function of “1) the degree of control the employer-vessel owner had over the seaman at the time of injury; and 2) whether the seaman, at the time of injury, was on personal business or on a mission for the benefit of his employer or attending to the business

¹ WSF misstates the law when it argues that “‘in the service of the ship’ is narrowly construed for maintenance and cure purposes.” Resp. Br. at 46. The law as professed by the U.S. Supreme Court is in sharp conflict with WSF’s position. As support, WSF cites Price v. Connolly-Pacific Co., 162 Cal. App. 4th 1210 (2008), but Price does not hold that the term is “narrowly construed”.

of the employer.” Lee v. Mississippi River Grain Elevator, Inc., 591 So.2d 1371, 1373 (La. App. 1991).

Courts have consistently held that a seaman need not be onboard the vessel in order to be in the “course of employment.” Aguilar, 318 U.S. 724; Braen, 361 U.S. 129; Williamson v. Western Pacific Dredging Corp., 441 F.2d 65, 66 (9th Cir. 1971). “When the seaman’s duties carry him ashore, the shipowner’s obligation is neither terminated nor narrowed,” and responsibility of the shipowner “should not be narrowed to exclude from its scope characteristic and essential elements of that work.” Aguilar, supra at 732, 735. In holding vessel owners liable for on-shore injuries, the Aguilar court cautioned against “cast[ing] upon the seaman hazards encountered only by reason of the voyage.” Id. at 733.

Indeed, ingress and egress are just the type of “hazard encountered only by reason of the voyage” that courts have held is in the course of employment. Id. at 733; Braen, 361 U.S. 129; Pensiero v. Bouchard Transp. Co., 2008 AMC 363 (E.D.N.Y. 2007). There is no meaningful distinction between seamen that live on the vessel and seamen that live ashore in the context of ingress and egress; both types of seamen must gain access to the vessel. Pensiero, supra. “[W]here the brown-water

seaman is on a direct path to resume his duties on board, and is injured on that path, there is no reason to create [a distinction between brown-water and blue-water seamen].” Id.

Even commuting, when the seaman is acting for the benefit of the employer or is under the control of the employer, is within the “course of employment.” Williamson, 441 F.2d at 66 (Seaman injured in car accident while commuting was in the course of employment because “commuting was part of the job [the seaman] was employed to perform”); Vincent v. Harvey Well Service, 441 F.2d 146, 147-49 (5th Cir. 1971) (Injury in car accident 40 miles from vessel while commuting was in the course of seaman's employment because the vessel “had no quarters suitable for sleeping, eating or relaxing during off-duty shift hours. The men physically had to leave the rig daily... In all of this the employer had a most vital interest.”).

In light of the broad construction of the term “course of employment” and relevant case law, when Shoffner was injured as she approached the vessel to begin work, after parking in WSF’s designated employee parking lot, and inside the restricted access bus staging area controlled by WSF, Shoffner was in the “course of employment” and entitled to seaman status.

B. Shoffner was injured in the course of employment because she was acting for the benefit of WSF and WSF exercised control over her actions.

Prior to Shoffner's injury, she parked her car in a parking lot paid for by WSF for exclusive use by WSF employees and emergency personnel. CP 394; 270. WSF "required" Shoffner to park in the lot to alleviate traffic congestion near the Lofall Terminal. CP 269. Pursuant to WSF orders, she placed in her car window an "on-duty" placard provided to her by WSF. CP 270. Wearing her WSF uniform, Shoffner then walked from the employee parking lot along the only available route of ingress to the vessel, along NW Wesley Way, "as instructed during training". Id. She passed a police checkpoint set up by WSF for the purpose of restricting access to the bus staging area adjacent to the vessel, and Shoffner was admitted to the area solely because she was a WSF employee reporting for her shift. Id.; CP 366. If Shoffner had failed to follow WSF's orders for where to park and how to get from the parking lot to the vessel, she could have been subject to discipline. When Shoffner was injured, she was within the bus staging area immediately adjacent to the vessel. CP 271.

Lee, relied on heavily by WSF, sets forth a rubric for determining whether a seaman is in the course of employment

based on two factors: 1) the degree of control exercised by the employer, and 2) whether the seaman acted for the benefit of the vessel owner. Lee, 591 So.2d at 1373; see also Forest v. Co-Mar Offshore Corp., 508 F. Supp. 980, 982 (E.D. La. 1981) (Commuter seaman injured on shore entitled to maintenance and cure upon “showing that the seaman was acting pursuant to some employer directive or that the employer was a recipient of some benefit as a consequence of the seaman’s shoreside activity”).

Applying these factors to the present case, WSF exercised a high degree of control over and received a direct benefit from Shoffner’s actions. “[I]t would violate the notions of fair play for [an employer] to encourage its employees to [perform a particular activity away from its premises] and then escape liability for injuries suffered by its workers as a result of the poor quality of the facilities it encouraged them to use.” Rannals v. Diamond Jo Casino, 265 F.3d 442, 447 (6th Cir. 2001), quoting Empey v. Grand Trunk Western R. Co., 869 F.2d 293, 295 (6th Cir. 1989). Here, WSF did just that: provided Shoffner with specific instructions for ingress and now seeks to escape liability for the injury she sustained while following WSF’s instructions. Ingress is a necessary component of a seaman reporting for duty and is

consistently held to be in the “course of employment”. Aguilar, 318 U.S. 724; Braen, 361 U.S. 129; Marceau v. Great Lakes Transit Corp., 146 F.2d 416 (1945). In the admiralty context, “the hazards of the journey may fairly be regarded as the hazards of the service.” Williamson, 441 F.2d at 66. The facts, when considered in the light most favorably to Shoffner, indicate that when Shoffner followed WSF’s specific instructions, she was under WSF’s control.

Furthermore, WSF received a direct benefit from Shoffner’s actions at the time of her injury. WSF leased the employee parking lot a distance away from the Lofall Terminal to alleviate potential traffic congestion in the vicinity of the terminal. CP 391-92; 394; 366. Traffic congestion was reduced in part because employees like Shoffner parked in the employee parking lot paid for by WSF and walked to the vessel via the sidewalk on NW Wesley Way. CP 366. Had Shoffner not received specific instructions from her employer on where to park, she could have parked closer to the terminal and may not have encountered the hazard that caused her injury. Furthermore, when Shoffner reported for duty, it was necessarily for the benefit of her employer. “[S]hipowners have to have their seamen on board; the seamen ... would be subject to discipline if they failed to get there; and their

return to their vessels is for the shipowners' benefit...". Pensiero, 2008 AMC 363. When Shoffner proceeded toward the vessel to report for duty by the only available route of ingress, she did so for the benefit of WSF.

In consideration of the factors set forth in Lee, and the broad scope of the "course of employment" under maritime law, Shoffner acted in the course of employment when she was injured because she was under WSF's control and acted for WSF's benefit.

C. Shoffner was injured while using the only available route of immediate ingress and was thus injured in the course of employment.

In its brief, WSF claims Shoffner was "commuting" at the time she was injured. Resp. Br. at 6; 27; 29. Although even commuting is within the course of employment under many circumstances, Shoffner's commute ended the moment she entered the employee parking lot paid for by WSF. Williamson, 441 F.2d 65; Vincent, 441 F.2d 146. Once Shoffner entered the employee parking lot, her actions were dictated by WSF's orders: she parked where told, displayed an "on-duty" placard as told, and walked where told into the restricted bus staging area controlled by WSF. CP 270. Shoffner would not have been injured but for the fact that she was boarding the vessel to report for duty. A seaman

is in ingress/egress when traversing an area that must be traversed in order to reach the vessel.² Aguilar, 318 U.S. at 737; Marceau, 146 F.2d at 419. Since it was necessary for Shoffner to traverse the bus staging area where she was injured in order to gain access to the vessel, this case is more appropriately analyzed as an ingress/egress case rather than a commuting case.

When a seaman proceeds toward the vessel via a customary route of ingress, the seaman is in the course of employment. Marceau, 146 F.2d at 418. “[A] seaman is as much in the service of his ship when boarding it on first reporting for duty, quitting it on being discharged, or going to and from the ship while on shore leave, as he is while on board at high sea.” Braen, 361 U.S. at 132. WSF has not cited a single case holding that a seaman was not in the “course of employment” while engaged in

² Courts have defined ingress/egress in a number of ways: Rivers v. Schlumberger Well Surveying Corp., 389 So. 2d 807, 813 (La.App. 3 Cir. 1980) (“[A] Jones Act employer has a non-delegable duty to furnish a seaman with a safe means of ingress and egress to and from the vessel. The scope of this duty extends from the vessel to the shore *and includes the dock to which the vessel may be berthed, and adjacent land.*”) (emphasis added); Sassaman v. Pennsylvania R. Co., 144 F.2d 950, 952 (3rd Cir. N.J. 1944) (“[I]n order for an injured employee to be able to claim a right of action under the Federal Employers’ Liability Act, it must be made to appear that his injuries were sustained either upon the premises where he normally performed the duties of his employment *or upon premises so closely adjacent thereto as to be a part of the working premises in the sense that the employee was required to traverse them in going to or upon leaving his work.*”) (emphasis added).

ingress to or egress from the vessel. Case law dictates that, at minimum, seamen who are attempting to board the vessel from the only route of immediate ingress directly adjacent to the vessel are entitled to coverage.³

For example, in Aguilar the court held that two seamen, one injured when he fell into a ditch while proceeding through the pier toward the street and the other injured when he was hit by a car inside the gated area where the vessel was moored, were both in the course of their employment. 318 U.S. at 725-26. The court reasoned that there was “no significant difference ... between imposing the liability for injuries received in boarding or quitting the ship and enforcing it for injuries incurred on the dock or other premises which must be traversed in going from the vessel to the public streets or returning to it from them.” Id. at 737. It was necessary for Shoffner to traverse the section of sidewalk where she was injured in order to reach the vessel, and therefore, she was injured in the course of employment.

³ See Aguilar, 318 U.S. 724; Farrell v. United States, 336 U.S. 511, 69 S. Ct. 707, 93 L.Ed. 850 (1949); Braen, 361 U.S. 129; Black v. Red Star Towing, 860 F.2d 30 (2nd Cir. 1988); Daughenbaugh v. Berkleham Steel Corp., Great Lakes S.S. Div., 891 F.2d 1199 (6th Cir. 1989); Marceau, 146 F.2d 416; Hocut v. Ins. Co. of N. America, 254 So. 2d 108 (La. App. 3rd Cir. 1971); Pensiero, 2008 AMC 363;

As another example, in Bavaro v. Grand Victoria Casino, the plaintiff slipped and fell in a parking garage owned and controlled by the defendant vessel owner on her way to work. 1998 U.S. Dist. LEXIS 23095 (N.D. Ill. 1998). The garage was connected to a land-based pavilion from which one boarded the vessel. Id. The court held that the seaman was injured in the service of the ship, rejecting the defendant's reliance on Sellers v. Dixilyn Corp., 433 F.2d 446 (5th Cir. 1970), because the plaintiff was injured upon entering the employer's premises in the course of arriving at work. Bavaro, supra. The facts of Bavaro are strikingly similar to the present case. Both seamen parked their cars in the vessel owner's parking facilities after commuting to work and were injured when they proceeded to board the vessel. Under Bavaro, when Shoffner was in WSF's parking lot, she was in the course of employment. It defies logic to hold that after proceeding from the parking lot into the bus staging area controlled by WSF adjacent to the vessel, Shoffner was no longer in the course of employment—especially since she would not have been admitted to the restricted

Bavaro v. Grand Victoria Casino, 1998 U.S. Dist LEXIS 23095 (N.D. Ill. 1998); Rodriguez v. Trump Casino, 2009 U.S. Dist LEXIS 65501 (N.D. Ind. 2009).

area where she was injured but for the fact that she was there as a WSF employee responding to the call of duty.

In Pensiero, the seaman was injured while crossing a barge owned by a third party to which the vessel owner's boat was moored and which was necessary to cross in order to access the vessel. 2008 AMC 363. The court held, "where the brown-water seaman is on a direct path to resume his duties on board, and is injured on that path," the seaman is injured in the course of employment. Id. As in Pensiero, Shoffner was on a direct path to resume her duties onboard the vessel.

In Braen, the seaman was directed by the vessel owner to make repairs to a raft, and was injured on a catwalk used to access the raft prior to starting work. 361 U.S. 129. Finding for the seaman, the court held, "a seaman is as much in the service of the ship when boarding it on first reporting for duty ... as he is while on board at high sea." Id. at 132. Shoffner was injured "when boarding [the ship] on first reporting for duty" which under Braen is squarely within the course of employment.

In Marceau, 146 F.2d 416, a ship's cook was injured in the course of employment when he slipped a few feet from a

ladder used as ingress to the vessel when reporting for duty. Id. at

417. The seaman was in the course of employment because:

The plaintiff was acting under orders when he returned to the ship. Consequently at the time of the accident he was not only acting in the course of his employment but suffered his injuries while on property in the possession and under the control of the defendant as lessee and over which the plaintiff had to pass in order to return to his work. Under the decisions a man is acting in the course of his employment when coming to or returning from work, and *upon the employer's premises or upon adjacent property if approaching by a customary route.*

Id. at 418 (emphasis added).

In order for a seaman engaged in ingress to be in the course of employment, the seaman need only use a “customary route”. Id. Not only did Shoffner use a customary route of ingress, but the sidewalk on NW Wesley Way was the *only* available route pursuant to WSF orders. CP 270; 367. Consequently, Shoffner was injured in the course of employment as a matter of law.

D. There is no blue-water / brown-water distinction in the context of injuries sustained during ingress.

WSF incorrectly claims that a blue-water / brown-water distinction exists. Resp. Br. at 2; 5; 24. However, even if such a distinction existed, it is not pertinent to cases involving ingress or egress, and WSF fails to cite a single case where

ingress or egress was held to be outside the course of employment. Whether a seaman lives onboard a vessel or commutes to it, the crossing of areas which the seaman must traverse in order to reach the vessel is within the course of employment. Aguilar, 318 U.S. at 737. Where a vessel has “no quarters suitable for sleeping, eating or relaxing during off-duty shift hours” and the seamen “physically [have] to leave the rig daily”, the vessel owner has a “most vital interest” in the seamen entering and leaving the vessel. Vincent, 441 F.2d at 147-49.

In Pensiero, the court rejected the vessel owner’s argument, identical to WSF’s here. Finding in favor of the seaman, the Pensiero court held that the seaman was injured in the course of employment because he was injured on the only available route of ingress and was there in order to access the vessel. 2008 AMC 363. The seaman was “answerable to the call of duty” because if he had failed to board the vessel, he would have been subject to discipline. Id. Like in Pensiero, if Shoffner had failed to board the vessel, which required walking along NW Wesley Way in the bus staging area, she would have been subject to discipline and was thus answering the call of duty. In rejecting the blue-water / brown-water distinction, the Pensiero court reasoned:

[The vessel owner's] distinction between blue-water and brown-water seamen has validity in some cases, but not here. It would be one thing if plaintiff had been injured during his three weeks shore time while bowling or playing pool. In such a case, the need for non-ship leisure time of blue-water seaman likely compels a broader entitlement to maintenance and cure. *But where the brown-water seaman is on a direct path to resume his duties on board, and is injured on that path, there is no reason to create such a distinction.* Both the blue-water and brown-water shipowners have to have their seamen on board; the seamen in both instances would be subject to discipline if they failed to get there; and their return to their vessels is for the shipowners' benefit as well as their own.

Id. (citations omitted, emphasis added).

Shoffner seeks recovery for an injury sustained on a direct path to resume her duties onboard the vessel. Consequently, if a blue-water / brown-water distinction exists at all, it does not apply here to this ingress case.

E. The long-distance commuting cases relied on by WSF are not ingress cases.

WSF's entire argument rests on three cases, none of which are on point. Resp. Br. at 6; See Lee, 591 So.2d 1371; Sellers, 433 F.2d 446; Daughdrill v. Diamond M. Drilling Co., 447 F.2d 781 (5th Cir. 1971). These cases concern long-distance commuting, remote in time and space from the vessel. In Lee, the seaman was killed in a car accident on his way home 110 miles

away after disembarking the vessel. Id. at 1375. Lee's home was at most a four hour drive from the vessel, yet the accident occurred approximately six hours after he disembarked. Id. Furthermore, Lee's blood alcohol level was .07 percent, indicating Lee did not go directly home but stopped to engage in activities that included drinking alcoholic beverages. Id. In Sellers, the seaman was injured in a car accident 250 miles from the vessel, seven and a half hours after disembarking. 433 F.2d at 447-48. The accident occurred during the seaman's commute home, and between leaving work and the time of the accident, the seaman had stopped for food and gas. Id. Finally, in Daughdrill, the seaman was killed in a car accident over 100 miles from the vessel on his way home.

In contrast, Shoffner was injured just minutes before her shift, inside the bus staging area immediately adjacent to the vessel. The holdings in Lee, Sellers, and Daughdrill indicate only that commuter seamen, when injured many miles from the vessel and after engaging in leisure activities or on personal errands, are not in the course of employment. These cases do not undermine the long accepted principle that a seaman is in the course of employment when gaining access to the vessel by a customary route of immediate ingress. Marceau, 146 F.2d at 418. Shoffner's

commute to work ended when she reached WSF's parking lot and, following orders, proceeded through the bus staging area controlled by WSF immediately adjacent to the vessel. Shoffner was in the course of employment when she was injured on "premises which must be traversed in going from the vessel to the public streets or returning to it from them." Aguilar, supra at 737.

F. Shoffner was injured in the course of employment because she was responding to the call of duty.

Shoffner was injured as she walked on NW Wesley Way within the restricted access bus staging area of the Lofall Terminal a few minutes before her shift. CP 270. She was there solely because she was reporting for duty on the vessel. Id. She was not on a personal errand; she was not on her way home miles from the vessel. WSF argues that when Shoffner was not specifically being paid for her time, she was not "answerable to the call of duty."⁴ Resp. Br. at 3; 7; 10-11; 18; 31. Although Shoffner

⁴ Furthermore, WSF's argument fails because under Shoffner's collective bargaining agreement with WSF, she was subject to the call of duty at any time. The agreement provides, "The Employer has the right to require an employee to work overtime if no other qualified employee is available or if the vessel manning requirements cannot be fulfilled in a timely manner." CP 285; 269. WSF argues that since "WSF employees ... work fixed schedules and are not routinely subject to being called to duty on their scheduled time off", that they were not answerable to the call of duty. Resp. Br. at 10-12. However, the fact that WSF *had a right* to

was not receiving her hourly wage at the time she was injured, WSF was paying for her parking and had arranged for employee parking for the purpose of avoiding congestion at the bus staging area. CP 269; 391-92; 394. Furthermore, when a seaman is in fact responding to the call of duty, whether the seaman is being paid at a particular moment is immaterial to whether the seaman is in the “course of employment”. Rodriguez v. Trump Casino, 2009 U.S. Dist. LEXIS 65501 (N.D. Ind.); Bavaro, 2001 U.S. Dist. LEXIS 3091; Vincent, 441 F.2d 146. The fact that Shoffner was injured inside the bus staging area while reporting for duty is sufficient in and of itself to establish that she was injured in the course of employment.

G. WSF’s control over the premises where Shoffner was injured weighs in favor of a finding that she was injured in the course of employment.

WSF incorrectly assumes that Shoffner was not injured in the course of employment because WSF did not own the premises upon which Shoffner was injured. See Resp. Br. at 3. This argument fails for two reasons: 1) WSF *controlled* the area where Shoffner was injured, and 2) coverage extends to “adjacent property” whether or not owned or controlled by the vessel owner.

call Shoffner back to work at any time indicates that she was answerable to the

A seaman "is acting in the course of his employment when coming to or returning from work, and upon the employer's premises or upon adjacent property if approaching by a customary route." Marceau, 146 F.2d at 418. An employer may be held liable "for permitting a dangerous condition emanating from the vessel to arise at the place where [the employee] was injured even though it lacked control or right of control over that place." Hagans v. Ellerman & Bucknall Steamship Co., 318 F.2d 563, 579 (3d Cir. Pa 1963). In Marceau, the seaman was entitled to coverage because "at the time of the accident he was not only acting in the course of his employment but suffered his injuries while on property in the possession and under the control of the defendant as lessee and over which the plaintiff had to pass in order to return to his work." Id.; see also Aguilar, 318 U.S. 724; Braen, 361 U.S. 129; Pensiero, 2008 AMC 363.

Although WSF did not *own* the premises, it exercised exclusive control over the bus staging area adjacent to the vessel where Shoffner was injured.⁵ If it weren't for the fact that Shoffner

call of duty at all times.

⁵ WSF argues that since the sidewalk where Shoffner was injured was a Kitsap County sidewalk, walking on this sidewalk was not within the course of Shoffner's

was reporting for duty on the vessel, she would have been denied access to the very place where she was injured. CP 269-70. The facts that WSF installed additional lighting, set up cones, and repainted the lines on the road are additional factors showing that it had the authority to alter the premises and to affect safety in the area. CP 130-31; 270. WSF exercised exclusive control over the bus staging area adjacent to the vessel, and thus when Shoffner was injured she was in the “course of employment”.

H. WSF’s unreasonable, willful and persistent denial of maintenance and cure supports an award of attorney’s fees, costs and compensatory damages.

When Shoffner was injured just minutes before her shift, she was within the restricted access bus staging area adjacent to the vessel, had displayed an “on-duty” placard in her car window, and was following direct orders for how to board the vessel when reporting for duty. In light of the extensive case law supporting the availability of maintenance and cure under these circumstances,

employment. However, before the closure of the Hood Canal Bridge, the State of Washington entered into an agreement with Kitsap County to close the end of NW Wesley Way, and posted a Washington State Patrol trooper to control access. CP 381; 366. As the defendant in this case, the State of Washington exercised control over the bus staging area, including the sidewalk where Shoffner was injured. As noted above, ownership of the sidewalk is immaterial.

WSF's continued denial of maintenance and cure was unreasonable, willful and persistent.

In Vaughan v. Atkinson, 369 U.S. 527 (1962), the U.S. Supreme Court held that an injured seaman could recover attorney's fees incurred to secure maintenance and cure where the shipowner had been "willful and persistent" in its failure to pay. Id. at 533; Kopczynski v. The Jacqueline, 742 F.2d 555, 559, 1985 A.M.C. 769 (9th Cir. 1984) (Attorney's fees awarded when the failure to provide maintenance and cure was "arbitrary, recalcitrant or unreasonable"). Shoffner is clearly entitled to maintenance and cure for the injury she sustained during ingress to the vessel. WSF's persistent refusal to pay was unreasonable and supports an award of attorney's fees.

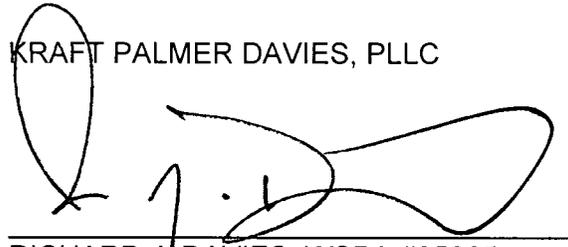
II. CONCLUSION

Shoffner respectfully asks this court to reverse the trial court and hold as a matter of law that she was in the course of her employment when she was injured on a direct path to the vessel inside the bus staging area controlled by WSF immediately adjacent to the dock where the vessel was moored. In addition, because WSF's refusal to pay maintenance and cure was

unreasonable, willful and persistent, Shoffner asks this court to award attorney's fees on appeal.

RESPECTFULLY SUBMITTED this 21ST day of October, 2011.

KRAFT PALMER DAVIES, PLLC

A handwritten signature in black ink, appearing to read 'R.J. Davies', is written over a horizontal line. The signature is stylized and somewhat abstract.

RICHARD J. DAVIES, WSBA #25365
Attorneys for Appellant Leigh Ann Shoffner

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On this day, I caused to be served via legal messenger a copy of the following:

1. Appellant's Reply Brief

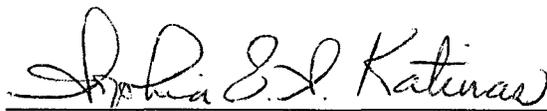
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11 OCT 21 AM 9:16
STATE OF WASHINGTON
BY _____
DEPUTY

DATED this 20th day of October, 2011 at Seattle,
WA.



Sophia E. S. Katinas